



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R04-RCRA-2012-0173; FRL-9823-1]

#### North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate Final Rule.

**SUMMARY:** North Carolina has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final rule. In the "Proposed Rules" section of today's **Federal Register**, EPA is also publishing a separate notice that serves as the proposal to authorize these changes. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize North Carolina's changes to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a notice in the **Federal Register** withdrawing today's immediate final rule before it takes effect, and the separate notice published in today's "Proposed Rules" section of this **Federal Register** will serve as the proposal to authorize the changes.

**DATES:** This final authorization will become effective on *[insert date 60 days after the date of publication]* unless EPA receives adverse written comment by *[insert date 30 days after the date of publication]*. If EPA receives such comment, EPA will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-R04-RCRA-2012-0173**, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: [gleaton.gwen@epa.gov](mailto:gleaton.gwen@epa.gov)
- Fax: (404) 562-9964 (prior to faxing, please notify the EPA contact listed below).
- Mail: Send written comments to Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
- Hand Delivery or Courier: Deliver your comments to Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Instructions: EPA must receive your comments by *[insert date 30 days after the date of publication]*. Please refer to Docket Number **EPA-R04-RCRA-2012-0173**. Do not submit information that you consider to be confidential business information or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-

mail address will be automatically captured and included as part of the comment that is placed in the public docket and made publicly available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You may view and copy North Carolina's application and associated publicly available materials from 8:00 a.m. to 4:00 p.m. at the following locations: EPA, Region 4, RCRA Division, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; telephone number: (404) 562-8500; and the North Carolina Department of Environment and Natural Resources, 217 West Jones Street, Raleigh, North Carolina 27603; telephone number: (919) 707-8219. Interested persons wanting to examine these documents should make an appointment with the office at least a week in advance.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn Gleaton, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; telephone number: (404) 562-8500; fax number: (404) 562-9964; e-mail address: [gleaton.gwen@epa.gov](mailto:gleaton.gwen@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **A. Why are revisions to state programs necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in unauthorized States. Thus, EPA will implement those requirements and prohibitions in North Carolina, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

### **B. What decisions has EPA made in this rule?**

On June 8, 2009, North Carolina submitted a final complete program revision application, seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2004, and June 30, 2008 (also known as RCRA Clusters XV through XVIII). EPA concludes that North Carolina's application to revise its authorized program meets all of the statutory and

regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR Part 271. Therefore, EPA grants North Carolina final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this notice.

North Carolina has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

**C. What is the effect of this authorization decision?**

The effect of this decision is that the changes described in North Carolina's authorization application will become part of the authorized State hazardous waste program, and will therefore be federally enforceable. North Carolina will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA retains its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the State regulations for which North Carolina is being authorized by today's

action are already effective and enforceable requirements under State law, and are not changed by today's action.

**D. Why wasn't there a proposed rule before today's rule?**

Along with this immediate final rule, EPA is publishing a separate notice in the "Proposed Rules" section of today's **Federal Register** that serves as the proposal to authorize these State program changes. EPA did not publish a proposed rule before today because EPA views this as a routine program change and does not expect comments that oppose this approval. EPA is providing an opportunity for public comment now, as described in Section E of this notice.

**E. What happens if EPA receives comments that oppose this action?**

If EPA receives comments that oppose this authorization, EPA will withdraw today's immediate final rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposed rule mentioned in the previous section, after considering all comments received during the comment period, and will address all such comments in a later final rule. You may not have another opportunity to comment on these State program changes. If you want to comment on this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program, EPA will withdraw that part of today's immediate final rule but the authorization of the program changes that the comments do

not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

**F. What has North Carolina previously been authorized for?**

North Carolina initially received final authorization on December 14, 1984, effective December 31, 1984 (49 FR 48694), to implement a hazardous waste management program. EPA granted authorization for changes to North Carolina's program on the following dates: March 25, 1986, effective April 8, 1986 (51 FR 10211); August 5, 1988, effective October 4, 1988 (53 FR 1988); February 9, 1989, effective April 10, 1989 (54 FR 6290); September 22, 1989, effective November 21, 1989 (54 FR 38993); January 18, 1991, effective March 19, 1991 (56 FR 1929); April 10, 1991, effective June 9, 1991 (56 FR 14474); July 19, 1991, effective September 17, 1991 (56 FR 33206); April 27, 1992, effective June 26, 1992 (57 FR 15254); December 12, 1992, effective February 16, 1993 (57 FR 59825); January 27, 1994, effective March 28, 1994 (59 FR 3792); April 4, 1994, effective June 3, 1994 (59 FR 15633); June 23, 1994, effective August 22, 1994 (59 FR 32378); November 10, 1994, effective January 9, 1995 (59 FR 56000); September 27, 1995, effective November 27, 1995 (60 FR 49800); April 25, 1996, effective June 24, 1996 (61 FR 18284); October 23, 1998, effective December 22, 1998 (63 FR 56834); August 25, 1999, effective October 25, 1999 (64 FR 46298); February 28, 2002, effective April 29, 2002 (67 FR 9219); December 14, 2004, effective February 14, 2005 (69 FR 74444); March 23, 2005, effective May 23, 2005 (70 FR 14556); and February 7, 2011, effective April 8, 2011 (76 FR 6561).

**G. What changes is EPA authorizing with this action?**

On June 8, 2009, North Carolina submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21.

EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that North Carolina's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization.

Therefore, EPA grants North Carolina final authorization for the following program changes:

<b>Description of Federal Requirement</b>	<b><u>Federal Register</u> Date and Page</b>	<b>Analogous State Authority<sup>1</sup></b>
208 – Methods Innovation Rule and SW-846 Final Update IIIB & Correction	70 FR 34538 06/14/05 70 FR 44150 08/01/05	15A NCAC 13A .0101(e); 15A NCAC 13A .0103(c); 15A NCAC 13A .0106(a) and (c)-(f); 15A NCAC 13A .0109 (k), (o), (v)-(w) and (aa); 15A NCAC 13A .0110(j), (n), (s)-(u); 15A NCAC 13A .0111(d) and (g); 15A NCAC 13A .0112(c) and (e); 15A NCAC 13A .0113(b) and (i); and 15A NCAC 13A .0118(b) and (e)-(g)
209 – Universal Waste Rule: Specific Provisions for Mercury Containing Equipment	70 FR 45508 08/05/05	15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a); 15A NCAC 13A .0109(b); 15A NCAC 13A .0110(a); 15A NCAC 13A .0112(a); 15A NCAC 13A .0113(a); and 15A NCAC 13A .0119(a)-(c)
211 – Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”)	70 FR 57769 10/04/05	15A NCAC 13A .0106(a)



212 – NESHAP: Final Standards for Hazardous Waste Combustors	70 FR 59402 10/12/05	15A NCAC 13A .0101(e); 15A NCAC 13A .0109(q); 15A NCAC 13A .0110(o); 15A NCAC 13A .0111(d); and 15A NCAC 13A .0113(a)-(b), (f)-(g), (i) and (k)
213 – Burden Reduction Initiative	71 FR 16862 04/04/06	15A NCAC 13A .0102(b); 15A NCAC 13A .0103(c); 15A NCAC 13A .0106(a); 15A NCAC 13A .0109(c), (e)-(k), (m)-(o), (q), (s)-(t), (w) and (y); 15A NCAC 13A .0110(b), (d)-(n), (r), (t) and (v); 15A NCAC 13A .0111(d); 15A NCAC 13A .0112(a); and 15A NCAC 13A .0113(b) and (g)
214 – Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations	71 FR 40254 07/14/06	15A NCAC 13A .0102(b); 15A NCAC 13A .0103(c); 15A NCAC 13A .0106(a) and (c)-(f); 15A NCAC 13A .0107(c), (e) and (g)-(h); 15A NCAC 13A .0109(b)-(c), (g)-(o), (q), (s)-(y) and (aa); 15A NCAC 13A .0110(a)-(b), (d), (f)-(n), (q)-(v) and (x); 15A NCAC 13A .0111(b)-(d) and (f)-(g); 15A NCAC 13A .0112(a) and (c)-(e); 15A NCAC 13A .0113(a)-(b), (f)-(g) and (j); 15A NCAC 13A .0118(a)-(b) and (e)-(h); and 15A NCAC 13A .0119(a)-(c)
216 – Exclusion of Oil Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas	73 FR 57 01/02/08	15A NCAC 13A .0102(b) and 15A NCAC 13A .0106(a)
217 – NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments	73 FR 18970 04/08/08	15A NCAC 13A .0109(q) and 15A NCAC 13A .0111(d)
218 – F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes	73 FR 31756 06/04/08	15A NCAC 13A .0106(d)

<sup>1</sup> The North Carolina provisions are from the North Carolina Hazardous Waste Management Rules, 15A NCAC 13A, effective as of August 1, 2008.

**H. Where are the revised State rules different from the Federal rules?**

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

**I. Who handles permits after the authorization takes effect?**

North Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until they expire or are terminated. EPA will not issue any more permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which North Carolina is not authorized.

**J. How does today's action affect Indian Country (18 U.S.C. 1151) in North Carolina?**

North Carolina is not authorized to carry out its hazardous waste program in Indian Country within the State, which includes the Eastern Band of Cherokee Indians. EPA will continue to implement and administer the RCRA program in these lands.

**K. What is codification and is EPA codifying North Carolina's hazardous waste program as authorized in this rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal

Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of North Carolina's changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart II, for the authorization of North Carolina's program changes at a later date.

#### **L. Administrative Requirements**

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State

RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State’s application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective [*Insert date 60 days from date of publication*], unless objections to this authorization are received.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: May 16, 2013

Gwendolyn Keyes Fleming  
Regional Administrator  
Region 4

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